Supreme Court, U.S.
FILED
JUN 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. . . . .

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

W. DAVID WESTON
Petitioner/Appellant

V.

JEFFREY G. BANKS, ET AL.
Defendants

On Writ of Certiorari to the United States Circuit Court of Appeals For the Tenth Circuit

APPELLANT APPENDIX "B - 2" ASSOCIATES JOINT OPERATING AND MANAGEMENT COMMITTEE AGREEMENTS

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BEST AVAILABLE COPY

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

v.

JEFFREY G. BANKS ET. AL.,
Defendants

PETITION FOR WRIT OF CERTIORARI

THE TELEGRAPH MINE ASSOCIATES JOINT OPERATING AGREEMENT

Agreement dated as of the day of 1980 by and among Cascade Energy and Metals Corporation, a Nevada Corporation (the "Operating Manager") and each of the Purchasers (the "Purchasers") of the working interests in the property known as the Telegraph Mining Claims (the "Mining Claims"), as more particularly described in Exhibit "A" to the Prime Lease. The parties here to are entering into this Agreement in order to facilitate the development, production and sale of gold and silver and other minerals from the property for their respective separate profit (such entities hereinafter referred to as the "Program"). Each of said purchasers shall execute a counterpart of this Joint Operation Agreement which will be accepted by the

Operating Manager when they have signed said Agreement and returned a copy to the Purchaser of the working interests.

WITNESSETH:

WHEREAS, each Purchaser is the owner of fractional undivided working interests (the "Units") in the Mining Claims (sometimes referred to herein as the "Property") in the amount set forth opposite his name on the signature page hereto, out of an aggregate of 35 Units ; and

WHEREAS, the Program will be engaged in the development of the property and the production of gold and silver and other minerals from the property pursuant to the Sublease from Telegraph Mine Limited, a Utah limited partnership and Rex Montis Silver Company, a Utah corporation, on its own behalf and as general partner of Gold Technics, Ltd., a California limited partnership, (hereinafter collectively referred to as the "Sublessor") a form of which is attached as Exhibit "C" (the "Sublease") to the Confidential Memorandum dated September 15, 1980, offering such working interests (the "Memorandum"); and

WHEREAS, the Sublessor is loaning to the Program $800,000 to provide for the preproduction costs of the development of the property (the "Development Loan"); and

WHEREAS, the purchasers and the Operating Manager desire to provide for the development, exploitation and management of the Property and to make certain provisions as to the rights, privileges and obligations as hereinafter set forth:

NOW, THEREFOR, in consideration of the premises and the mutual covenants and obligations herein contained, the parties agree as follows:

1. **Authority of the Operating Manager.** The purchasers hereby commit to the Operating Manager, and the

Operating Manager hereby agrees to perform, the duties of Operating Manager of the program subject to the terms and conditions as set forth in this Agreement. The operating Manager shall perform such duties for the account of, and for so doing to comply with all agreements, permits, and real ever, to the control and direction of the purchasers as provided for herein on whose behalf such duties are to be performed.

2. **Duties of Operating Manager.** The operating Manger is authorized and instructed on behalf of each o the purchasers to:

(a) Generally oversee the development, maintenance and day-to-day operations of the property and in that regard obtain (i) competent superintendents, engineers and labor and /or on behalf of the Program such Mining Contracts in accordance with the Financial Projections, as contained in the Memorandum; (ii) mining ana other materials, supplies and equipment, all as required for the preproduction, construction and operation of the Program, and enter into contracts as may be necessary i connection therewith:

(b) Carry out or authorize experiments and studies designed to develop efficient and practical methods for producing minerals from the properties:

(c) Oversee the operations and the performance of the Sublessor and contract miners and require that the latter carry a sufficient amount of workmen's compensation insurance an public liability insurance covering the Program and the Purchasers:

(d) Engage and retain attorneys, accountants and such other consultants and accountants and such other consultants and advisors as necessary;

(e) Cause a notice of each the Purchaser's working Interest Agreement with the sublessor to be filed in the

records maintained by the Clerk of the County of San Bernardino;

(f) Cause all necessary reports and other filings to be made as may be necessary in order to comply with the laws having application to the leasing and operations of mineral properties;

(g) Collect and receive the proceeds from the proceeds from the disposition of the minerals extracted from the property giving proper receipts therefor, and pay therefrom all royalties, costs, taxes and such other costs and expenses of the development and operation of the property;

(h) Cause the proceeds of the Development Loan to be used for development costs only and provide for repayment of said Loan subject only to payment of the costs of production royalties and the payments as due pursuant to the Royalty Notes; and

(i) Maintain all funds received in connection with the working interests and not distributed to the Purchasers in a segregated account separate and apart from any other account maintained by the Operating Manager. The account shall be in the name of TELEGRAPH MINING ASSOCIATES.

(j) Explore claims included in the Program.

(k) Sell or dispose of any tools, equipment, supplies and facilities included in the program that may be worn out, obsolete or no longer useful.

3. **The Purchaser's Right to Pro Rata Share of the Minerals.**

(a) Each Purchaser has, and Expressly reserves, the right to his pro rata share of the gold, silver and other minerals mined and removed and milled, and the right, personally to sell or direct the sale thereof for his own benefit upon such terms as he may see fit, receive the proceeds, thereof and to request that instead of sale of said

gold, silver and other minerals, that they be delivered to him in kind. Any additional expenses incurred by reason of the Purchaser's reservation of his pro rata share of the gold, silver and other minerals, including reasonable administration expenses, shipping costs, and storage shall be promptly paid by such Purchaser to the Operating Manager, or credited against the amounts otherwise due him hereunder.

(b) In the event any party shall fail to make the arrangements necessary to take in kind, or separately dispose of its proportionate share of the gold, silver and other minerals produced from the Program, the Operating Manager shall have the right, subject to the revocation at will by the party owning it, but not the obligation, to sell such to others or authorize others to sell it at any time and from time to time, for the account of the nontaking party at the best price obtainable in the area for such production. Any such purchase or sale by the Operating Manager shall be subject always to the right of the owner of the production to exercise at any time its right to take in kind, or separately dispose of, its share of all gold, silver and other minerals not previously delivered to a purchaser. Any purchase or sale by the Operating Manager or by any sales agent of any party's share of gold, silver and other minerals shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one year. Any sales agreements not terminable upon thirty days notice shall be effective only as to the Purchases approving the Agreement, but any sales agreement shall be binding in accordance with its terms on such Purchasers as give their approval.

(c) Subject to the rights set forth in (b) above, the Operating Manager, on behalf of the Purchasers may enter into a Sales Agreement to sell gold, silver and other minerals at the best available price. Said Sales Agreement

will be no longer than one year. The Purchasers will be informed of the terms of the Sales Agreement as soon as available. At the end of the first year, the Purchasers will inform the Operating Manager of their individual desires as to whether the Sales Agreement, if any, should be renewed or another sales agent appointed. If after notice to the Purchasers that a sales agreement will terminate and that a new Sales Agreement is expected to be entered into, the Purchaser does not instruct the Operating Manager as to the disposal of his share of the gold, silver and other minerals, the Operating Manager may enter into a further Sales Agreement for a period of no longer than one year.

4. **Duty of Operating Manager to Develop the Property.** The Operating Manager hereby agrees to perform such duties, using its best efforts, skill and judgment to make all installations necessary to place the Property in a condition to produce ore therefrom. The Operating Manager shall select and utilize employees, experts and advisors as well as mining contractors and/or subcontractors who are competent in their respective fields; the Operating Manager however, does not guarantee results. Such efforts through the expenditure of the pre-production loan amount shall include the following necessary items to place the Property into production as that term is used in the mining industry.

(1) Engineering and geological expenses, surveying, mapping.

(2) Cutting pads for drilling sites, drilling blast holes, blasting and drifting.

(3) Mobilization and rental or purchase of equipment and machinery, and purchase of fuel.

(4) Site preparation, including cutting and grading roads, maintaining access roads.

(5) Blasting and miscellaneous supplies.

(6) Necessary Labor.

(7) Filing necessary reports and applications; payment of required fees and permits.

(8) Insurance.

(9) Office support and general administrative costs.

(10) Per diem covering mileage, fuel, travel, meals and lodging.

5. **Gold and Silver Mining Operations**.

(a) Proposed Operations. Should any party hereto desire to mine any portion of the Property contained in the Sublease other than the portion to be mined by a majority in interest of the Units, or to rework or deepen a mine at the joint expense of all parties or a mine jointly owned by all the parties and not then producing in paying quantities, the party desiring to mine, reopen or deepen shall give the other parties written notice of the proposed operation, specifying the work to be performed, the location, proposed depth, objective formation and the estimated cost of the operation. The parties receiving such a notice shall have thirty (30) days after receipt of the notice within which to notify the parties wishing to do the work whether they elect to participate in the cost of the proposed operation. Failure of a party receiving such notice to reply within the period above fixed shall constitute an election by that party not to participate in the cost of the proposed operation. Any notice or response given by telephone shall be promptly confirmed in writing. Notwithstanding the foregoing, all parties hereto, without further notice to any person, shall be deemed to have consented to the activities described in the Memorandum regarding the Telegraph Mining Associates Program for a period ending one year after the execution of this Agreement.

(b) Operation by Less than All Parties. If one or more of the parties hereto ("Non-Consenting Parties") elects as aforesaid not to participate in a proposed activity, then such of the parties hereto who are not Non-Consenting

Parties shall have the right to conduct the proposed activities in such manner as the Operating Manager deems prudent without interfering with the rights of the Non-Consenting Parties. The Operating Manager shall delineate a portion of the Property as set aside for the Non-Consenting Parties by taking into account the reasonable needs for the proposed activity as well as the interests of the Non-Consenting Parties.

(c) Right to take Production in Kind. Unless he shall have disposed of his gold, silver and other minerals otherwise, each party shall have the right to take in kind or separately dispose of its proportionate share of all gold, silver and other minerals produced from the Property, exclusive of production unavoidably lost. Any extra expenditure incurred in the taking in kind or separate disposition by any party of its proportionate share of the production shall be borne by such party. Any party taking its share of production in kind shall be required to pay for only its proportionate share of such part of the Program's facilities which it uses and any additional expenses incurred by the Program by reason of a Purchasers reservation of his pro rata share of the gold, silver and other minerals, including reasonable administration expenses, cartage and storage, shall promptly be paid by such Purchaser or be credited against the amounts otherwise due him hereunder.

6. **Limitation of Operating Manager's Authority**. Anything herein to the contrary notwithstanding, the Operating Manager is not empowered or authorized to enter into any amendment, modification or termination of the Sublease between the Sublessor and the Purchasers of the Units herein, or to borrow money or execute notes or other instruments of indebtedness binding the Purchasers of the Units without the express concurrence of the Purchasers of said Units; except that they are expressly authorized to borrow $800,000 ($22,857.14 per Unit) on

behalf of the Purchasers from the Sublessor for preproduction development costs at an interest rate of twelve percent (12%) which will be repaid out of the first production of ore from the Property, but will be subordinate to the schedule payments required pursuant to the Royalty Notes due to the Sublessor under the lease. It is further understood that if the interest on the Note is not capable of being paid at the time the loan is repaid, said interest will not accrue additional interest.

7. **Default by Sublessor Under the Prime Lease**. If the Sublessor defaults in its obligations under the Prime Lease, including the making of rental payments or royalties, the Operating Manager will give notice of said default, along with the Sublessor's having given such notice, to each Purchaser. Said Purchaser may pay his proportionate share of the royalties to the Prime Lessors or by making payment through the operating Manager herein, and step into the position held by the Sublessor under the Sublessor's Prime lease. No Purchaser is obligated hereunder to make said payment; but if such payments are not made, it is understood that his working interest may be forfeited. Further, the operating Manager will follow the directions of a Majority -in-Interest in curing defaults not involving the payment or royalties and taking any other action consistent with the terms of that Agreement.

8. **Responsibility of Operating Manager**. The operating Manager shall devote so much of its time and efforts to the performance of its services hereunder as is in its judgment reasonable, necessary and desireable. The Operating Manager may engage in such other business activities as it may, from time, determine, even though such activities may be competitive with those of the Purchasers. The Operating Manager, or persons or entities affiliated with it, shall have the right to perform services for the

Purchasers (other than as required pursuant to this Agreement)and to receive Compensation therefor on terms comparable to those, Purchasers could obtain for such services from nonaffiliated persons or entities.

9. Indemnification of Operating Manager. The Operating Manager shall not be liable to the Purchasers for any act or omission in good faith and within the scope and authority conferred by this Agreement which does not amount to willful misconduct or gross negligence. Each of the Purchasers shall indemnify the Operating Manager, its agents, representatives and assigns against any and all claims, demands, litigations, judgments, costs and expenses (including reasonable attorney fees) asserted against it by or in favor of any person or entity not a party to this Agreement, arising out of or in connection with his performance of the services under this Agreement and resulting from errors in judgment or omissions, whether or not disclosed, unless caused by the willful misconduct or gross negligence of the Operating Manager, provided (i) the Operating Manager shall promptly notify the Purchasers of any claim or litigation to which the foregoing indemnity may be applicable, and (ii) the Operating Manager shall not settle any claim or litigation or confess or consent to entry of any judgment, or willfully default in any litigation, to which the foregoing indemnity may be applicable, except on prior consultation with the Purchasers and the concurrence of the Majority in Interest of them.

10. Compensation and Expenses of Operating Manager. The Purchasers agree that the Operating Manager shall be paid as compensation for his services the sum of the following:

(a) Reimbursement of its out-of-pocket costs of management incurred for the Program which shall include travel expenses and a fair allocation or pro rata share of operating, handling, managing and overhead expenses, in-

cluding expenses for group insurance, safety, hospitalization and retirement, but excluding expenses for any profit-sharing payments.

(b) As compensation in full for all services rendered, the Operating Manager shall receive an Operating Management Fee of five percent (5%) of the gross proceeds of the ore mined and sold, (as that term is defined in Section 3 of the Lease) provided that such amount shall be accrued and become payable to the extent of cash available after payment of other expenses from the mining and milling of said minerals removed from the Property.

(c) The Operating Manager shall be entitled to receive out of production a Construction and Pre-Production development Fee equal to two percent (2%) of all costs incurred in the pre-production development of the Program, to construct and develop the property to the production stage.

(d) At the time each Purchaser executed this Agreement, the Operating Manager shall be paid $800 per Unit for legal, accounting and other services incurred during 1980 in connection with its employment as the Operating Manager; thereafter, it shall charge each of the Purchasers the actual costs incurred for such expenses.

11. Records and Reports. The Operating Manager shall cause accurate books to be kept for each Purchaser, an accurate record of the operation of the Property and all transactions conducted on behalf of the Purchaser. Separate accounts shall be maintained for each Purchaser. Such books of account and other records of the Operating Manager in connection with the Property shall be available to any Purchaser during regular business hours and at such other reasonable times at the offices of the Operating Manager. The Operating Manager will submit to each Purchaser for the mining operations on the Property quarterly reports as to the operation of the mine, as well as annual

reports and information necessary for the Purchasers to prepare tax returns.

12. Transferability of Working Interests. No Purchaser may sell, transfer, assign or otherwise dispose of his interest in the Property other than to a members of his immediate family, except by operation of law:

(a) Without the written consent of the Operating Manager and a Majority-In-Interest of all other Purchasers as defined in Section 23 of this Agreement; and

(b) Unless a registration statement with respect to such working interest(s) has become effective under the Securities Act of 1933 and/or the state securities laws, or the Operating Manager has been furnished with an opinion of counsel satisfactory in form and substance to the effect that such registration is not required.

Provided, however, that it is understood that in the event that any Purchaser defaults in his obligations to the Sublessors may become the owner of such Purchaser's working interest(s).

For purposes of this Agreement, a Purchaser's immediate family shall include his ancestors, issue, siblings, spouse and the spouses of his issue and siblings.

(c) No assignment of any Units by a Purchaser may be made if the Units sought to be assigned, when added to the total of all other Units assigned, would, in the opinion of counsel for the Program, result in the termination of its partnership status under the Internal Revenue Code.

(d) No assignment, sale, transfer, exchange or other disposition of any Units in the Program may be made except in compliance with the provisions of this Agreement and the applicable rules of any applicable governmental authority.

(e) An assignee, when accepted as such by the Program, shall be entitled to receive cash distributions from the Program attributable to the Units acquired by reason of such assignment from and after the effective date of the

assignment of such Units to him; however, anything herein to the contrary notwithstanding, the Program and the Operating Manager shall be entitled to treat the assignor of such Units as the absolute owner thereof in all respects, and shall incur no liability for distributions or transmittal of reports and notices required to be given to Purchasers hereunder which are made in good faith to such assignor until such time as the written instrument of assignment has been received by the Program and recorded on its books and the effective date of an assignment has passed. Provided the Program has actual notice of any assignment of Units, the effective date of such assignment on which the assignee shall be deemed an assignee of record, shall be the last day of the month set forth on the written instrument of assignment.

(f) Any assignment, sale, exchange or other transfer in contravention of any of the provisions of this Section 12 shall be void and ineffectual, and shall not bind or be recognized by the Program.

13. Liability of Purchasers.

(a) The liability of the Purchasers shall be severable, not joint or collective. Each Purchaser shall be responsible only for his obligation as herein set forth, and only for his proportionate share of expenses and obligations in connection with the Property.

(b) All costs and liabilities incurred in the exploration and development of the Property and the mining, milling and removal of ore therefrom shall be borne and paid for by the Purchasers in proportion to their interests.

(c) Notwithstanding anything to the contrary contained herein, the Operating Manager shall have no authority, express or implied to enter into any commitment or obligation on behalf of the Purchasers or otherwise do anything which would subject the Purchasers, or any of them, to any liability in excess of the Purchasers' respective interests in the minerals mined, milled and removed from

the Property and their interest in any proceeds from the sale of said minerals.

14. Terms of Agreement. this Agreement shall remain in full force and effect as to the Program as long as the Lease is continued in force, or any part thereof, unless earlier terminated by the affirmative vote of a Majority-In-Interest of the Purchasers.

15. Actions by the Purchasers. Purchasers owning a majority of the Units shall have the power (i) to direct the Operating Manager as to the conduct of the business of their working interests (ii) to adjust and pass on the Operating Manager's accounting, and (iii) to authorize and direct the Operating Manager in management decisions. Anything herein to the contrary notwithstanding, no Purchaser shall have any right to encumber or dispose of any other Purchaser's interest in the Property or pro rata share of the ore mined, milled and removed from the Property.

16. Tax Returns. The Operating Manager shall cause all necessary tax returns, reports and other filings to be made as may be necessary to comply with the laws applicable to the ownership of the Property for the operation of the Purchasers.

17. Election as to Taxation. The Purchasers of the Units of working interests herein elect under Section 761 of the Internal Revenue Code of 1954 as amended (the "Code") not to be subject to Subchapter K of the Code, and the Purchasers hereby authorize, empower and direct the Operating Manager to cause the filing of an election not to be subject to Subchapter K of the Code in accordance with the Treasury Regulations thereunder. Each Purchaser, by executing this Agreement, agrees not to take any action which would invalidate the election to exclude the working interests, as a group herein, from the provisions of Subchapter K of the Code.

18. Notices. Any notice, request, demand, statement or other communication provided for in this Agreement shall be in writing and shall be deemed to have been duly given or delivered on the day mailed if placed in a postpaid envelope and deposited with the United States mail, certified, return receipt requested, directed to the parties at the address listed after their respective names on the signature page hereto (or such other address of which any party may have given written notice to the others).

19. Benefit. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, legal representatives and assigns. Nothing contained herein, express or implied, shall be deemed to confer on any person, other than the parties hereto, or their respective heirs, successors, legal representatives or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

20. Construction. This Agreement shall be interpreted in accordance with the laws of the state of Utah.

21. Meetings. At any time or from time to time, Purchasers owning ten percent (10%) or more of the units may require, by written notice to the Operating Manager specifying in general terms the subjects to be considered, the Operating Manager to call, or the Operating Manager may on its own motion call, a special meeting of the Purchasers; and the Operating Manager within ten (10) days after any such notice is received shall give notice of such special meeting to all Purchasers whose addresses are on record with the Operating Manager, including in such notice a copy of the notice requiring the call. Any Purchaser shall have the right upon notice in writing to require the Operating Manager to furnish by mail a list of the names, addresses and respective interests in the Sublease of all other Purchasers as shown on the records of the Operating

Manager at the time of the notice. Any Purchaser or his representative shall have the right to inspect and copy the names and addresses of all other Purchasers.

22. Gender and Heading. The use of any gender herein shall be deemed to be or include the other genders, and the use of the singular herein shall be deemed to be or include the plural (and vice-versa) wherever appropriate. The paragraph headings herein are inserted only as a matter of convenience and reference and in no way define, affect the meaning or interpretation of, limit, or describe the scope of this Agreement, or the intent of any provisions thereof.

23. Majority-In-Interest. The term "Majority-In-Interest" of the Purchasers as used in this Agreement shall mean a majority of the Units. 24. Arbitration. Any controversy between the parties hereto arising out of this Agreement shall be submitted to arbitration in the County of Salt Lake, State of Utah before any arbitrator or arbitrators chosen in accordance with the rules of the American Arbitration Association.

25. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

26. Execution in Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had all signed the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year above written.

SIGNATURES

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

v.

JEFFREY G. BANKS ET. AL.,
Defendants

PETITION FOR WRIT OF CERTIORARI

TELEGRAPH ASSOCIATES
RESOLUTION
MANAGEMENT COMMITTEE
AGREEMENT

At the annual meeting of the Telegraph Mining Associates held in Las Vegas, Nevada on the 14th day of August, 1982, upon motion duly made by Bernie Hodowski and seconded by Chris Waugh and carried by a majority of the Associates present, it was resolved that:

WHEREAS, Article 15 of the Telegraph Mining Associates Joint Venture Operating Agreement provided that the Associates owning a majority of the Units shall have the power (i) to direct the Operating Manager as to the conduct of the business of their working interests and (ii) to adjust and pass on the Operating Manager's accounting, and (iii)

to authorize and direct the Operating Manager in management decisions...and;

WHEREAS, a group of the Associates deem it in their collective best interest to elect a Management Committee to represent them in the conduct of the business of their working interests.

BE IT THEREFORE RESOLVED: that the Associates whose names appear as signatories below hereby elect and appoint a Management Committee to consist of the following seven Associates:

Dr. Phillip Bentz, Chairman
Delbert Ashley, Vice Chairman
Herbert Stoltenberg, Secretary
Bernie Hodowski
Chris Waugh
Joseph Green
Lowell Smith

and that said Management Committee shall be vested with such power of attorney and shall manage and conduct its affairs as set forth below.

NOW THEREFORE, on this 14th day of August, 1982, it is mutually agreed by and between the Associates (hereinafter called "The Associates"), whose names and signatures appear hereafter, as follows:

1. The Associates hereby agree to elect and appoint a Management Committee to consist of seven (7) persons. The Management Committee members shall be elected and qualified each year at an annual meeting of the Associates by majority ballot of the Associates. A Chairman, Vice Chairman and Secretary - Treasurer shall be appointed by and from among those so elected. Until their successors are duly elected and qualified, the Management Committee

hereby appointed shall be those Associates elected by the foregoing resolution made on the 14th day of August, 1982.

2. The Associates hereby constitute and appoint and by these presents do hereby make, constitute and appoint the Management Committee their true and lawful attorneys, for themselves, and in their name, and on their behalf to (i) direct the Operating Manager of the Telegraph Mine as to the conduct of the business of the working interests of the Associates, (ii) to adjust and pass on the Operating Manager's accounting, and (iii) to authorize and direct the Operating Manager in management decisions, and (iv) to authorize expenditures of the Associates in carrying out the agency created by this agreement and power of attorney. Notwithstanding anything herein to the contrary, no committee member or a majority of the Management Committee or the Management Committee as a whole shall have any right to encumber or dispose of any Associates interest in the Telegraph Mine property or pro rata share of the ore mined, milled and removed from the site of deposition on the property.

3. The Management Committee, nor any member thereof, shall not be responsible or liable for any assessments made to any Associate.

4. Under provision of Article 21 of the Joint Operating Agreement, the Management Committee shall call an annual meeting of the Associates, for the purpose of electing members of the Management Committee and of exercising and discharging any other powers or duties vested by this agreement or the Joint Operating Agreement. The Management Committee may call special meetings of the Associates at any time in accordance with the terms of the Joint Operating Agreement. At all meetings of the Management Committee or the Associates, the Chairman of the Management Committee shall preside. At any meeting of the Associates, annual or special, each Associate shall

be entitled to vote his respective interest in the Telegraph Mine Sublease.

5. At all times, the Management Committee agrees to conduct its affairs in accordance with the terms of the Joint Operating Agreement.

6. The death, incapacity, resignation or removal of a member of the Management Committee shall not terminate this Agreement or power of attorney. Any vacancy among the committee shall be filled by an Associate nominated and appointed by the remaining committee members for the unexpired portion of such term.

7. Regular meetings of the Management Committee shall be held at such times as they may from time to time fix, and they may hold meetings at any time for the transaction of any business upon the call of any member of the committee or any of the Associates. The Chairman, or in his absence, the Vice Chairman, shall preside at such meetings, and the Secretary of the committee shall take minutes of the proceedings and shall file a copy of all minutes so taken with the Operating Manager for permanent safekeeping. A majority of the committee shall constitute a quorum. A vote of the majority of the committee shall be required for affirmative action. Any Associate may attend and participate in such meetings. Notice of meetings in accordance with the Joint Operating Agreement, shall be sent to all parties to this agreement. A waiver of notice of meetings, whether regular or special, may be signed by all members of the Management Committee and thereby consent to the transaction of any business that may come before the committee at the said meeting.

8. The Management Committee is hereby authorized to receive such compensation, regular or special, and/or reimbursement of expenses, as they shall deem reasonable and proper. It is expressly agreed that any costs incurred by the Operating Manager in complying with any

special requests of the Management Committee shall be born proportionally by the Associates.

9. No member of the Management Committee shall be liable for any act or omission whatsoever of any other committee member or ASsociate; nor shall any committee member be liable for any negligence, error or judgment, or for any act or omission except for his own willful breach of trust and agency. No committee member shall be required to give any bond or surety to secure the performance of this agency.

10. Each of the members of the Management Committee and the Operating Manager shall be indemnified by and reimbursed by the Associates for any personal liability, expense or loss, or damage incurred or suffered, including liability, loss or damage resulting from Torts, in the administration of or enactment of the agency created hereby.

11. This Agreement shall not create any partnership relationship between the Associates or the members of the Management Committee. It is expressly agreed that in the event this agreement were to be construed by the Internal Revenue Department of the United States to create a relationship among the Associates other than that of each Associate being treated as if engaged separately in a trade or business with respect to his working interest in the Telegraph Mine Sublease, then this agreement is to be null and void.

12.. This Agreement may be executed in multiple copies, each of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Associates affix their hand and seal the day and year first above written.

THE ASSOCIATES